

**State Board of Education  
May 19, 2009  
Item M**

**Team:** Student Support Division

**Discussion Topic:** Proposed revisions to the Special Education Rules

**Statutory Authority:**

Individuals with Disabilities Education Act of 2004 (IDEA 2004), 16 V.S.A §2971-2974, S.B.E Rules 2360-2369 and 4314

**Background Information:**

The following are the intended outcomes of this proposed revision:

1. The US Department of Education enacted additional regulations for the Individuals with Disabilities Education Act (IDEA) that went into effect on December 31, 2008. We need to update our rules to be consistent with those regulations.
2. We propose to reorganize the rules to be consistent with the federal format. This reorganization will help the State Board and Department of Education more easily identify needed changes within our rules when new federal regulations are promulgated. Moreover, it will help families and schools recognize the connections between federal and state rules and regulations.
3. We propose reviewing the current language of our rules to identify and correct any instances where our rules surpass the requirements of state and federal statutes and regulations.

**Purpose of Discussion:** Preparation for anticipated vote at the June 22, 2009 State Board meeting to initiate the formal rulemaking process.

**Cost Implications:** With the exception of costs associated with the formal rulemaking process, there are no anticipated increases in local cost associated with these rules changes. The rule allowing a parental revocation of consent for special education has the potential to decrease special education expenses.

**Staff Available:**

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**Proposed Revisions to Special Education Rules include the following Rules:**

**2360.3 Definitions**

(7) Consent. Consent means that—

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (c) (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.  
(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).  
(3) If a parent revokes consent in writing for their child's receipt of special education and related services after the child is initially provided special education and related services, the LEA is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

(19) **Responsiveness to Instruction/Intervention (RtI)** is a multi-tiered, ~~school-wide,~~ instructional model. It includes continuous progress monitoring and scientific research-based instruction in general education to make data-based instructional decisions. decision-making approach that addresses academic difficulties of all students. It is an integrated school improvement model that is standards-driven, proactive and incorporates both prevention and intervention, at all levels. An RtI model includes the following components:

- (i) Clear academic and behavior goals are established at each grade level;
- (ii) Research based instructional practices are adopted and employed;
- (iii) Uninterrupted instructional time is implemented with a high degree of fidelity and integrity:
  - (A) Fidelity requires that teachers use all of the core instructional components skillfully
  - (B) Integrity requires that teachers adhere to recommended procedures and practices;
- (iv) Instructional decisions are guided by a reliable and valid assessment system that provides ongoing information about whether students are benefiting from the instruction/interventions that are provided;
- (v) Instructional practices are differentiated to meet learner needs based on the continuous progress monitoring and other measures that delineate student learning; and
- (vi) Tiered levels of support are provided in increasing levels of intensity in addition to the core curriculum
  - (A) Tier 1: the universal instructional practices in the general education classroom;
  - (B) Tier 2: supplementary intervention in addition to Tier 1 instruction;
  - (C) Tier 3: special education intervention for children with specific learning disabilities.
- (vii) A standard protocol system of support and/or a problem solving model is used to identify interventions provided within Tier 2.
- (vii) If a student does not respond to increasing levels of intervention, the individual student data gathered through the process may be used:
  - (A) to determine the appropriateness of a special education referral, and
  - (B) as part of a comprehensive evaluation for determination of special education eligibility for a specific learning disability.

### 2362.1 Categories of Disability

- (b) A specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, or do mathematical calculations.
- (1) Basic skill area(s) to consider within the identification of specific learning disability are:
    - (i) Oral expression;
    - (ii) Listening comprehension;
    - (iii) Written expression;
    - (iv) Basic reading;
    - (v) Reading fluency;
    - (vi) Reading comprehension;
    - (vii) Mathematics calculation; or
    - (viii) Mathematics reasoning.
  - (2) The school shall decide whether to use a discrepancy model or ~~subject to (iii)~~, a problem solving, response to instruction/intervention model (RtI) that determines if the student responds to scientific, research-based instruction as a part of the evaluation procedures to identify specific learning disabilities.
    - (i) When using a discrepancy model, the Evaluation Planning Team (EPT) shall document that the student exhibits a discrepancy of 1.5 standard deviations or greater between ability and expected levels of performance in one or more of the basic skill areas.
    - (ii) When using a problem solving, response to instruction model, the EPT shall document that the student has not responded to increasingly intensive levels of scientific, research-based intervention.
    - (A) ~~The school must submit to the Department of Education, a specific plan for the implementation of responsiveness to instruction process. This plan must include documentation of the following:~~
      - ~~1) The provision of a core curriculum that addresses the scientific research-based components of that curriculum;~~
      - ~~2) Universal screening of all students for risk factors associated with academic failure and possible learning disabilities (e.g., phonological awareness, fluency);~~
      - ~~3) Provision of supplemental support in increasing tiers of instructional intensity;~~
      - ~~4) Procedures for insuring the fidelity and integrity of the provision of the core curriculum components and supplemental instruction;~~
      - ~~5) Frequent progress monitoring of the student's response to supplemental support;~~
      - ~~6) Use of progress monitoring data to inform instructional decision making; and~~
      - ~~7) An educational support team that is comprised of relevant professionals, utilizes an effective problem-solving model, and engages in data-based decision making.~~
  - (3) The EPT determines that its findings under paragraph (b)(1) and (2) of this section are not primarily the result of:
    - (i) A visual, hearing, or motor disability;
    - (ii) Learning impairment;
    - (iii) Emotional disturbance;
    - (iv) Cultural factors;

- (v) Environmental or economic disadvantage; or
  - (vi) Limited English proficiency
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### 2362.2.1 Evaluations: General Requirements

(h) The EPT shall use:

- (1) Technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors;
- (2) Materials and procedures to assess a child with limited English proficiency which are selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills;
- (3) Specific tests which are valid for the purpose for which they are used and for the individual to whom they are administered;
- (4) Assessments which are selected and administered so as to ensure that when administered to a student with impaired sensory, manual, or speaking skills, the results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, except where those skills are the factors that the test purports to measure;
- (5) Bands of confidence or standard error of measurement when reporting and interpreting test scores and other evaluation results whenever they are available
- (6) Assessment tools and strategies that provide relevant information that directly assist persons in determining the educational needs of the child.
- (7) Evaluation procedures for identifying students with specific learning disabilities ~~using~~ must use one of the following:
  - (i) A discrepancy model that uses:
    - (A) Statistical procedures that correct for regression toward the mean when calculating a discrepancy in the determination of a specific learning disability. The correction for regression shall be calculated by one of the following:
      - 1) Regression that is factored into a student's score in the test construct, or
      - 2) The use of a predictive model that can correct for regression such as the Severe Learning Discrepancy Software Program.
  - (ii) A problem solving, response to instruction/intervention model ~~that uses~~ must identify:
    - (A) that a lack of response to increasing tiers of intervention is not sufficient to determine that a student has a specific learning disability; and A response to instruction model delineated by the school and includes
    - (B) the core deficits (such as phonological, rapid naming or short-term and working memory) that characterize a specific learning disability and the strengths of the child using cross-battery cognitive assessments;
    - (C) the impact of core deficits and strengths in basic skill areas; and
    - (D) that parents have been informed of their right to request a special education evaluation during the process.
      - 1) ~~Documentation of procedures for insuring the fidelity and integrity of the provision of the core curriculum components and supplemental instruction.~~
      - 2) ~~Documentation that there is ongoing collection of data for use in the evaluation of the student's response to specific scientific based instruction, including the intensity, duration, and the effect of this instruction.~~

- ~~3) Documentation of student performance. Measures may include benchmark assessments, screening, curriculum-based assessment, and continuous progress monitoring gathered prior to the referral to special education and any additional evaluation procedures as determined by the EPT that further delineate the presence of a specific learning disability.~~
  - ~~4) Documentation that parents were provided with a description of the research-based general education instruction available to the student.~~
  - ~~5) Documentation that the school provided the parents with a description of the research-based strategies utilized to increase the student's rate of learning.~~
  - ~~6) Documentation that parents have been informed of their right to request a special education evaluation during the process.~~
  - ~~(B) The school may refer the student for an evaluation for special education eligibility for a specific learning disability when the student has not responded to increasing levels of scientific research-based instruction.~~
  - ~~(C) A special education referral for evaluation begins upon consideration for tier 3 intervention, after supplemental instruction in tier 2 has evidenced a lack of response to increasing tiers of instruction. The timelines must be adhered to as described in Rule 2362.2.3 (b) and (c).~~
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### **2363.9 Consent to Initial Provision of Special Education Services**

- (a) A consent form shall be signed by the parent and received by the school district prior to the initial provision of IEP services.
- ~~(b) If the parent of a child fails to respond or refuses to consent to services the school district may not use due process procedures, or mediation, in order to obtain agreement or a ruling that the services may be provided to the child.~~
- (b) ~~(e)~~ If the parent of the child refuses to consent to the initial provision of special education or related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the LEA school district:
  - (1) May not use due process procedures, or mediation, in order to obtain agreement or a ruling that the services may be provided to the child.
  - (2) Will not be considered to be in violation of the requirement to make available a free, appropriate public education to the child for the failure to provide the child with the special education and related services for which the school district requests consent.
  - (3) Is not required to convene an IEP meeting or develop an IEP for the child for the special education and related services for which the school district requests such consent.
- ~~(c) If the parent provides written consent for the initial provision of IEP services before they have begun and then revokes the consent, the services shall not commence. The student shall remain eligible for services and the school district may attempt to resolve the matter with the parent by:~~
  - ~~(1) Discussing the matter through appropriate informal means;~~
  - ~~(2) Requesting mediation, or~~
  - ~~(3) Requesting that the student be re-evaluated to determine if he or she continues to be eligible for special education services. A re-evaluation could consist of a review of existing data.~~
- ~~(d) A parent may not revoke consent after services have begun. If a parent does not want some or all of the services to continue, services shall continue while the parent resolves his or her request through the following:~~
  - ~~(1) Discussing the matter with the IEP team, which could include requesting a reevaluation to determine continued eligibility, or~~

- ~~(2) Requesting mediation~~
- ~~(3) Filing an administrative complaint, or~~
- ~~(4) A due process hearing.~~
- (c) If the parent revokes consent in writing at any time subsequent to the initial provision of special education and related services, the LEA:
  - (1) May not continue to provide special education and related services, but must provide prior written notice prior to ceasing the provision of special education and related services;
  - (2) May not use due process procedures, or mediation, in order to obtain agreement or a ruling that the services may be provided to the child;
  - (3) Will not be considered to be in violation of the requirement to make available a free, appropriate public education to the child for the failure to provide the child with the special education and related services;
  - (4) Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.